F. M. S. REPORTS.

[APPELLATE CRIMINAL JURISDICTION]

CUSSEN, J.

July 21, 1939.

PUBLIC PROSECUTOR v. SIN LEE YOK.

[NEGRI SEMBILAN MAGISTRATE'S CRIMINAL APPEAL No. 6 of 1939]

Road Traffic Enactment, 1937, S. 116 (i) (a)—Application for driving licence—false declaration—knowledge of falsity.

The respondent, S.L.R., was charged under Section 116 (i) (a) of the Road Traffic Enactment, 1937, with making a false declaration in an application for a licence to drive a motor vehicle. The application was in the prescribed form and contained twenty one questions with blank spaces for answers to be filled in. Having no knowledge of English he got an acquaintance to write in the answers to the questions. The respondent then signed his name in Chinese at the foot of the form. The answer to question 12 was incorrect and false. The trial Magistrate acquitted and discharged the respondent. The Public Prosecutor appealed.

Held, that a person does not "make" a statement within the meaning and application of Section 116 (i) (a) of the Road Traffic Enactment, 1937, if he is not in fact aware that he is making that statement, making it in the sense that he signs his name at the foot of a series of questions and answers, unaware that amongst them is a statement which proves to be false.

Cases referred to:—

(1) *Ang Lock Toon & Another v. Public Prosecutor,* 1 F.M.S.L.R. 199.

(2) *Beh Ah Teng v. Public Prosecutor,* (1931–1932) F.M.S.L.R. 92.

(3) *Chong Kwong v. Public Prosecutor,* (1933–34) F.M.S.L.R. 337; 4 M.L.J. 41.

(4) *Ocean Accident Assurance & Guarantee Corpn., Ltd. v. Cole,* (1932) 2 K.B. 100.

(5) *Sherras v. de Rutzen,* (1895) 1 Q.B. 918.

Draper, Deputy Public Prosecutor, for the Appellant cited—

Road Traffic Enactment, 1937, section 116.

The Motor Vehicles Driving Licence Rules 1937, Rule 4 and Schedule.

Maxwell, 4th Ed. P. 160 *et seq.*

Road Traffic Enactment (English) Section 112 (a).

Sherras v. de Rutzen (5).

Ang Lock Toon & Another v. Public Prosecutor (1).

Chong Kwong v. Public Prosecutor (3).

Jeff, for the Respondent, cited—

Section 122 Road Traffic Enactment. Knowingly making and making a declaration knowing the same to be false are the same thing. Wording on back of application form Exhibit "A" . . . . "An applicant who for the purpose . . . knowingly makes any false statement."

Ocean Accident Assurance Co. v. Cole (4).

Before he can be convicted he must knowingly put his hand to something he knows to be false. No statutory requirement enforcing a true declaration in the same sense as Customs Enactment.

Draper, in reply.

Ocean Accident Assurance Co. v. Cole (4) is clearly distinguishable. There the Insurance Co. claimed there was no falsity and gave cogent reasons for their belief. Here the Respondent admits his declaration was false.

Cur. Adv. Vult.

Cussen, J.—This is an appeal by the Public Prosecutor against the decision of the Magistrate, Seremban, in Seremban Traffic Summons Case 248 of 1939.

One Sin Lee Yok was charged under section 116 (i) (a) of the Road Traffic Enactment 1937 with making a false declaration in an application for a licence to drive a motor vehicle, and was acquitted and discharged

The appeal proceeds now only on a question of law. The facts are these.

The Respondent applied for a driving licence—presenting his application in the prescribed form. This form is contained in the first schedule to "The Motor Vehicles (Driving Licences) Rules 1937". It is a form printed in English and contains twenty one questions with blank spaces for the answers to be filled in.

The Respondent, having no knowledge of English, got an acquaintance to write in the answers to the questions, and he (the Respondent) then signed his name in Chinese at the foot of the form.

The answer to question 12 was given as "No"—the question being—

> "12. Has any certificate of competence or driving licence held by you in any part of the world ever been endorsed, suspended or cancelled."

The correct answer should have been "Yes" as in 1923 in Singapore a licence held by the Respondent had been cancelled, a fact of which of course he was aware.

The defence was that the acquaintance who explained and filled in the application form either did not explain question 12 to the Respondent or, if he did, the Respondent did not understand, and so in fact the Respondent was not aware of the question and answer in the form which he signed. The Magistrate accepted this defence and acquitted the Respondent.

The argument put forward by the learned Deputy Public Prosecutor in this appeal is that the Respondent is liable notwithstanding his ignorance of the question and answer, that the law imposes on an applicant making a declaration an unconditional obligation to make correct statements. An applicant who presents a declaration is to be held absolutely responsible for anything that it contains whether or not he knows what is contained in it.

The learned Deputy Public Prosecutor relies for his arguments upon the actual words of the Enactment (section 116 (i) (a)) and also upon the contention that the subject matter of this legislation is of such a nature that it is necessary that obligations and penalties should fall upon the persons making a declaration irrespective of any actual knowledge or "mens rea".

He cited the following cases:—

Sherras v. De Rutzen[5].
Ang Lock Toon v. Public Prosecutor[1].
Chong Kwong v. Public Prosecutor[3].
Beh Ah Teng v. Public Prosecutor[2].

He also compared the language of section 166 (i) (a) with the language of section 112 (ii) of the English Road Traffic Act, 1930.

I do not find that *Sherras v. De Rutzen*[5] is of assistance in this particular case. In that case there is a description and a classification of the kind of acts in which *mens rea* is immaterial, but the present case does not fall within those.

Two of the local cases *(supra)* were under the Customs and Excise Enactment, and the other under the Opium and Chandu Enactment. They do not, in my opinion, provide any relevant authority for the present case.

Nor does it appear to me that there is the distinction suggested between section 112 (ii) of the Road Traffic Act 1930 and section 116 (i) (a) of our Enactment. Section 112 (ii) (the relevant words) reads—

> "Sec. 112 (ii). If any person.....knowingly makes any false statement....."

Section 116 (i) (a) reads—

> Sec. 116 (i) (a). If any person.....make any statement or declaration which to his knowledge is false."

Comparing these two forms of language I consider that the knowledge referred to is the same in both cases.

Mr. Jeff who appeared for the Respondent cited the case of *Ocean Accident and Guarantee Corporation Ltd. v. Cole*[4].

But this case is not relevant. The point in that case was that though the statement in the certificate was false it was not known to be false; there must be actual conscious knowledge of the falsity. There was no question of the Corporation and its officer not knowing that the statement was in the certificate.

The point in the present case is that the person making the declaration by signing his name at the foot of a form filled in by another person did not in fact know that it contained (in the form of question —printed—and answer in English) the particular statement which is false.

The point is then—is he to be held to have *'made'* that particular statement? Is he responsible for something in the declaration which he did not know to be in it? Is he responsible for the inaccuracy, mistake, or carelessness of the person who interprets the form to him and writes in the answers—a person whose services he must make use of as he is unable to fill in the form himself—having no knowledge of English—all he does and can do is to sign his name in Chinese at the foot of the form.

In my opinion a person does not "make" a statement in the meaning and application of this law (section 166 (i) (a)) if he is not in fact aware that he is making that statement, making it in the sense that he signs his name at the foot of a series of questions and answers, unaware that amongst them is that particular statement.

But I am of opinion that the onus is on the person alleging that he so signed a declaration to establish the lack of such knowledge.

The appeal is dismissed.

Appeal dismissed.